RECENT CASE NOTES

BILLS AND NOTES—ALTERATION OF CHECK FACILITATED BY SPACE LEFT IN DRAWING—LIABILITY OF BANK TO DRAWER.—The plaintiff signed a check handed to him by his clerk who kept the petty cash and who stated that two pounds was wanted for petty cash. The body of the check was in the handwriting of the clerk. The line intended for inserting words indicating the amount was entirely blank, but there were the figures 2. 0.0. in the line intended for figures. There were spaces before and after the figure "2" sufficiently large so that additional figures could be inserted. The clerk, after obtaining the plaintiff's signature, wrote in the blank line the words "one hundred and twenty pounds" and added the figures "1" and "0" on either side of the figure "2". He then cashed the check and absconded. *Held,* that the drawer could recover from the bank the amount paid, less two pounds. *Macmillan v. London Joint Stock Bank* (C. A.) [1917] 2 K. B. 439. See COMMENTS, p. 242.

BILLS AND NOTES—GRATUITOUS ASSIGNMENT BY SEPARATE INSTRUMENT.— The payee of promissory notes assigned them to the plaintiff by a separate instrument acknowledged before a notary and delivered to plaintiff without consideration, but did not deliver the notes themselves. The defendant holds both notes, one as indorsee for collection, and one as administrator of the payee's estate. *Held,* that there was a valid gift of the notes. *Burkett v. Doty* (1917, Cal.) 167 Pac. 518.

As the notes were not delivered, it is clear that no title passed under the law merchant or the uniform Negotiable Instruments Law. However, as the rights of a holder in due course are not involved, the assignment can be treated as that of an ordinary chose in action. That choses in action are alienable is now clearly recognized, at least where there is a consideration for the assignment. See Walter W. Cook, *The Alienability of Choses in Action* (1916) 29 HARV. L. REV. 816; (1917) 30 HARV. L. REV. 449. At common law the assignee would have to sue in the name of the payee. *Gookin v. Richardson* (1847) 11 Ala. 889; *Smalley v. Wright* (1857) 44 Me. 442. By statute in nearly all states, however, the assignee may now sue in his own name. *National Bank v. McCullough* (1908) 50 Oreg. 508, 93 Pac. 356. The California court found no difficulty, although the assignment was gratuitous, in recognizing the assignee as owner. In that state all distinctions between sealed and unsealed instruments have been abolished. Civ. Code, sec. 1629. As a result, gifts of realty and personalty may be made without delivery by instruments in writing not under seal. *Driscoll v. Driscoll* (1904) 143 Cal. 528, 77 Pac. 471. In the principal case, the same rule was applied to choses in action, the instrument in question being regarded as a deed. The result reached seems both a sensible one and a natural application of modern views as to the alienability of choses in action. *Cf.* (1917) 26 YALE LAW JOURNAL, 304.

G. L. K.

CONSTITUTIONAL LAW—ADMIRALTY—STATE WORKMEN'S COMPENSATION ACT NOT APPLICABLE TO INJURIES WITHIN ADMIRALTY JURISDICTION.—An employee of a company operating a coastwise steamship line was accidentally killed while engaged in the work of unloading a cargo at a pier in New York. In proceed-

ings under the New York Workmen's Compensation Act, his widow and children received an award which was approved by the New York Court of Appeals. The case was taken by writ of error to the United States Supreme Court. *Held,* that the state compensation act, as applied to matters within admiralty jurisdiction, was in conflict with the grant of exclusive admiralty jurisdiction to the federal courts by the constitution, and was to that extent invalid, and the award must be set aside. *Southern Pacific Co. v. Jensen* (1917) 37 Sup. Ct. 524. See COMMENTS, p. 255.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—JURISDICTION OVER NON-RESIDENT.—In a suit in Minnesota by an insurance society to cancel the policy issued by it on the life of the original defendant who was duly served with process but died before trial, a statutory substitution was made of the beneficiaries as parties defendant. One of these, a resident of California not served in Minnesota, contested the jurisdiction of the Minnesota court. *Held,* that jurisdiction was not obtained and that a judgment against the beneficiary would be a denial of due process. *National Council of Knights and Ladies of Security v. Scheiber* (1917, Minn.) 163 N. W. 781. See COMMENTS, p. 252.

CONSTITUTIONAL LAW—IMPAIRMENT OF THE OBLIGATION OF CONTRACTS—JUDICIAL DECISION.—Several interurban street car companies were merged, their tracks conneeted and the entire set of properties then operated by the consolidated company as one line of railway. The company later went into the hands of receivers and the bonds of each of the constituent lines went to default. Suits were brought by the trustees to foreclose separately each of the underlying mortgages. On a petition by the receivers setting forth that great injury would be done to all creditors if several foreclosure proceedings were permitted, since the property mortgaged was clearly more valuable as a unit than as a number of stub lines, the trial court ordered a sale of the entire assets discharged of all prior liens. The trustees appealed contending that the mortgage contracts with the original companies had been impaired. *Held,* that the order below, even though judicial action, did amount to an impairment under Article I, Section 10, of the Federal Constitution, and should be modified. *Phila. Trust Co. v. Northumberland County Trac. Co.* (1917 Pa.) 101 Atl. 907.

Although certain language in early United States Supreme Court opinions and some decisions may be found in accord with the doctrine laid down in this case, the tendency at the present time is certainly toward the contrary interpretation, namely, that legislative action is necessary to accomplish an unconstitutional impairment of contract. *Hanford v. Davies* (1896) 163 U. S. 273, 278, 16 Sup. Ct. 1051, 1053; *Centl. Land Co. of W. Va. v. Laidley* (1895) 159 U. S. 103, 109, 16 Sup. Ct. 80, 82; cf. *Chicago v. Sheldon* (1869 U. S.) 9 Wall. 50, 56, *Ohio Life Ins. Co. v. Debolt* (1853 U. S.) 16 How. 416, 432. Such would appear to be the clear meaning of the words used in the impairment clause itself. Such also is the accepted view where retroactive criminal law is concerned. *Ross v. Oregon* (1912) 227 U. S. 150, 161, 33 Sup. Ct. 220, 222. The state courts, however, are at variance. *Swanson v. Ottumwa* (1906) 131 Ia. 540, 549-550; 106 N. W. 9, 12-13; *King v. Phoenix Ins. Co. of Bklyn.* (1906) 195 Mo. 290, 307, 92 S. W. 892, 896-897. Cf. *Ruf v. Mueller* (1911) 49 Ind. App. 7, 12, 96 N. E. 612, 614. From the principal case it may be gathered that Pennsylvania is holding to the interpretation which the United States courts have now abandoned. But there seems to have been no necessity of invoking either state or federal constitutional provisions in support of the decision, since, without these grounds,